

REMARKS

Claims 1-45 are pending in the application. Claims 1-8, 11, 15-30, 33 and 37-45 are rejected under 35 U.S.C. §103(a). Claims 9-10, 12-14, 31-32 and 34-36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants have amended claims 9 and 31 to be written in independent form including all of the limitations of the base claim and any intervening claims and hence claims 9-10, 12-14, 31-32 and 34-36 are allowable.

Applicants note that claims 9 and 31 were not amended to overcome prior art but to be written in independent form. Hence, the amendments made to claims 9 and 31 were not narrowing in scope and therefore no prosecution history estoppel arises from the amendments to claims 9 and 31. *Festo Corp v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 62 U.S.P.Q.2d 1705, 1711-1712 (2002); 56 U.S.P.Q.2d 1865, 1870 (Fed. Cir. 2000). Further, the amendments made to claims 9 and 31 were not made for a substantial reason related to patentability and therefore no prosecution history estoppel arises from such amendments. *See Festo Corp.*, 62 U.S.P.Q.2d 1705 at 1707 (2002); *Warner-Jenkinson Co. v. Hilton Davis Chemical Co.*, 41 U.S.P.Q.2d 1865, 1873 (1997).

Applicants further note that Applicants have adopted Examiner's suggestion in the Office Action. Paper No. 15, page 6. The Examiner indicated that claims 9-10, 12-14, 31-32 and 34-36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Paper No. 15, page 6. Applicants have amended claims 9 and 31 incorporating the limitations of claims 1 and 24, respectively, and therefore adopt Examiner's suggestion. Consequently, claims 9-10, 12-14, 31-32 and 34-36 are allowable. According to M.P.E.P. §1207, amendments may be entered upon filing of an appeal brief provided that the amendment conforms to the requirements of 37 C.F.R. §1.116. According to 37 C.F.R. §1.116, amendments may be made complying with any requirements of form

expressly set forth in a previous Office Action. Applicants adopt Examiner's suggestion as set out in Paper No. 15, which requires only a cursory review by the Examiner and therefore satisfies the requirements of 37 C.F.R. §1.116. M.P.E.P. §1207. Furthermore, a showing of good and sufficient reasons as to why the amendment is necessary and not presented earlier is not required because Applicants adopt Examiner's suggestion as set out in Paper No. 15, which requires only a cursory review by the Examiner. M.P.E.P. §1207. Therefore, the amendments of claims 9 and 31 should be entered resulting in an allowance of claims 9-10, 12-14, 31-32 and 34-36.

CONCLUSION

As a result of the foregoing, it is asserted by Applicants that claims 1-45 in the Application are in condition for allowance, and Applicants respectfully request an allowance of such claims. Applicants respectfully request that the Examiner call Applicants' attorney at the below listed number if the Examiner believes that such a discussion would be helpful in resolving any remaining issues.

Respectfully submitted,

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